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1902.

Supreme Court of the United States.

ERIE RAILROAD COMPANY, Plaintiff in Error,
against
ALBERT L. PURDY, Defendant in Error.

This is a consolidation of twenty-one actions brought in the Supreme Court of the State of New York by Albert L. Purdy against the Erie Railroad Company, each, to recover a penalty under Chapter 1027, Laws of 1895, as amended by Chapter 835, laws of 1896 of the State of New York. The material portion of the act of 1895 is as follows: "Every railroad corporation operating a railroad in this state the line or lines of which are more than one hundred miles in length, * * * shall issue mileage books entitling the holder thereof to travel one thousand miles on the line or lines of such railroad. * * * * Any railroad corporation which shall refuse to issue * * * * shall forfeit fifty dollars, to be recovered by the party to which such refusal is made." The amendatory matter inserted by the amendment of 1896 relates to the manner of issuing and use of the books. The answers, each, in substance, alleged the act an interference with the right of Congress to regulate commerce among the several states and therefore void as in contravention to article I of the Constitution of the United States.

The same question was raised on a motion for non-suit. No other federal question was raised. A verdict was ordered for the plaintiff in the first ten causes of action and a non-suit granted as to the remainder, and the exceptions heard in the first instance at the Appellate Division of the Supreme Court, where judgment was ordered for the plaintiff on the verdict and from the judgment the defendant appealed to the Court of Appeals, and the judgment of the court below was affirmed. The Court of Appeals construed the statute in question as applicable to transportation wholly within the state, only. The railroad company applied for and was allowed a Writ of Error to the Supreme Court of the State of New York.

It is alleged that the Supreme Court committed error in holding that the act in question does not violate Article XIV of the Constitution of the United States, and also that the Supreme Court erred in holding that the act in question does not violate Article I of the Constitution of the United States.

Now comes the defendant, in proper person, and moves the court to dismiss the Writ of Error herein for want of jurisdiction and uniting a motion to affirm the judgment of the court below, on the ground that the question on which the jurisdiction depends is so frivolous as not to need further argument.

1st. There is no federal question involved, for the reason that the construction placed upon chapter 1027 of the laws of 1895, as amended by chapter 835 of the laws of 1896, of the State of New York, that the statute applies, only, to transportation wholly within the State of New York, as construed by the Court of Appeals, and as so construed does not infringe upon or

against the constitution of the United States, and hence to dismiss the Writ of Error.

2nd. The record upon this Writ of Error discloses that no Federal question was raised in the Supreme Court in this action, other than that the said statutes were void, as an attempt to regulate commerce among the several states, and thereby in violation of article I of the Constitution of the United States and the construction placed upon the statute in question by the Court of Appeals, limiting it to transportation wholly within the state is binding on this court and the only question before this court is merely its jurisdiction, and the question on which jurisdiction depends is so frivolous as not to need further argument, and hence to affirm the judgment below.

ALBERT L. PURDY,
Defendant in Error in person.

To Adelbert Moot, counsel for plaintiff in error:

Take notice.—That the foregoing motion to dismiss or for judgment of affirmance will be submitted to the court for determination at a session thereof commencing Monday, December 10th, 1900, at the Capitol in the city of Washington, before the justices thereof, and the annexed printed brief and argument will be filed and relied upon by me for such motion.

ALBERT L. PURDY,
Defendant in Error in person.

Dated, November 16th, 1900.

Supreme Court of the United States.

ERIE RAILROAD COMPANY, Plaintiff in Error,
against
ALBERT L. PURDY, Defendant in Error.

Motion to dismiss Writ of Error or to affirm judgment.

Brief and argument of defendant in error on motion to dismiss Writ of Error on the ground that no federal question is involved and that the Court has no jurisdiction and uniting a motion to affirm the judgment on the ground that although the record may show that the Court has jurisdiction, it is manifest that the question on which jurisdiction depends is so frivolous as not to need further argument.

WRIT OF ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

Reported below 162 N. Y. 43.

Twenty one actions were brought by the defendant in error against the plaintiff in error, to recover, in each action, the sum of fifty dollars, penalty, for the failure of the plaintiff in error to issue and sell on demand to the defendant in error a mileage book, as required by the provisions of Chapter 1027 of the Laws of 1895 as amended by Chapter 835 of the Laws of 1896. We compare these laws below.

The act of 1895, appears at the left hand, above and below the matters inserted in the act as amended in 1896, the amendatory matter inserted in 1896 being in brackets.

The mileage book act of 1895, being chapter 1027 of the Laws of 1895. Took effect June 15th, 1895.	Chapter 1027 of the laws of 1895, as amended by Chapter 835 of the Laws of 1896. Took effect May 22nd, 1896.
"Every railroad corporation operating a railroad in this state, the line or lines of which are more than one hundred miles in length, and which is authorized by law to charge a maximum fare of more than two cents per mile and not more than three cents per mile,	"Every railroad corporation operating a railroad in this state, the line or lines of which are more than one hundred miles in length, and which is authorized by law to charge a maximum fare of more than two cents per mile, and not more than three cents per mile,
	(and which does charge a maximum fare of more than two cents a mile)
shall issue mileage books	shall issue mileage books
	(having one thousand coupons attached thereto,)
entitling the holder thereof	entitling the holder thereof
	(upon complying with the conditions hereof)
to travel one thousand miles	to travel one thousand miles

on the line or lines of such railroad, for which the corporation may charge a sum not to exceed two cents per mile.

on the line or lines of such railroad, for which the corporation may charge a sum not to exceed two cents per mile.

(Such mileage books shall be kept for sale by such corporation at every ticket office of said corporation in an incorporated village or city and shall be issued immediately upon application therefor. The holder of any such mileage book shall be entitled, upon surrendering, at any ticket office on the line or lines of such railroad, coupons equal in number to the number of miles which he or any member of his family or firm, or a salesman of such firm, wishes to travel on the line or lines of such railroad to a mileage exchange ticket therefor. Such mileage exchange ticket shall entitle the holder thereof without producing the mileage book upon which such exchange ticket was issued, to the same rights and privileges in respect to the transportation of person and property to which the highest class ticket issued by such corporation would entitle him. Such mileage books shall be good until all coupons attached thereto have been used.)

Any railroad corporation which shall refuse to issue a mileage book as provided in this section, or, in violation thereof, to accept such mileage book for transportation shall forfeit fifty dollars, to be recovered by the party to which such refusal is made."

Any railroad corporation that shall refuse to issue a mileage book as provided in this section, or, in violation thereof to accept such mileage book for transportation, shall forfeit fifty dollars, to be recovered by the party to which such refusal is made."

The twenty one actions were consolidated and tried as one action. A verdict was given in favor of the defendant in error for the penalties in the actions numbered 1 to 10 both inclusive and a non-suit was granted in the actions numbered 11 to 19, both inclusive and "A" and "B."

The plaintiff in error was incorporated November 14th, 1895, as appears from the memorandum of the certificate in evidence on page 65 of the record.

The complaints in the first ten actions appear in the record at pages 4 to 24 and the answers on page 49-53.

In the answer it is alleged that the act in question is an interference with interstate commerce and the same question is made in the FIFTH ground for non-suit at page 103 of the record.

This is the only exception taken to rulings upon Constitutional questions raised.

The exceptions taken by the plaintiff in error to the rulings of the Court in the first ten causes of action, only, were heard

at the Appellate Division of the Supreme Court, Fourth Department, pursuant to the order of the trial court. No other questions were raised there. Judgment was ordered on the verdict, which was entered as directed, in favor of the defendant in error and against the plaintiff in error, on the 17th day of October, 1898, for $1171.09.

No opinion was written.

The plaintiff in error appealed to the Court of Appeals and the judgment was there affirmed, with costs. The opinion written by Cullen, J., appears in the record at pages 116–120.

On March 6th, 1900, the costs on this appeal were taxed at $134.69 and an order entered in favor of the defendant in error and against the plaintiff in error, therefor.

The Smith case declaring the mileage book law of Michigan unconstitutional was decided by this Court after the decision by the Appellate Division, in this case, and the plaintiff in error sought to raise for the first time, on the argument before the Court of Appeals, the same questions raised in the Smith case. The Court discussed the question as to whether the statute of 1895, though void as to existing railroad companies, is not constitutional and valid as to companies organized in the future, and also the question as to whether the act of 1896, passed subsequently to the incorporation of the plaintiff in error increased the burden imposed by the act of 1895, and held that it did not, but the Court held that the objections and exceptions taken by plaintiff in error were not sufficient to present the question sought to be raised and stated, "and the rule seems settled that such an objection, to be available here, must have been raised in the Courts below (Vose v. Cockroft, 44 N. Y., 415; Delaney v. Brett 51 N. Y., 78.)"

The statute was also construed as applying to transportation wholly within the state.

The plaintiff in error has sued out this Writ to bring its exceptions here for review. The assignment of errors appears on page 120. It is claimed that the act in question violates Article I of the Constitution of the United States, which provides that Congress shall have power to regulate commerce among the states.

It is also assigned as error, that the Supreme Court of the State of New York erred in not holding the act in question void as against Article XIV of the Constitution of the United States.

But no such question was raised in the Supreme Court of the State.

The Defendant in error makes this motion to dismiss the WRIT OF ERROR in this case upon the ground that there is no federal question involved. The Court of Appeals having construed the statute as applicable only to transportation within the state, such interpretation is conclusive upon this Court. There being also united a motion to affirm the judgment on the ground that, although the record may show that the Court has jurisdiction, the question on which jurisdiction depends is so frivolous as not to need further argument.

FIRST

The Act in question does not interfere with interstate commerce.

The law, as construed by the Court of Appeals, has reference to transportation, only, wholly within the state, and such interpretation will bind this Court.
DeSaussure v. Gaillard, 127 U. S. 216, (8 Sup. Ct. 1053—1061.)
Tullis v. L. E. & W. R. Co., 175 U. S. 348, (20 Sup. Ct. 136—138.)
Stone v. Wisconsin. 94 U. S. 181—183.
Morley v. L. S. & M. S. R. Co., 146 U. S. 162, (13 Sup. Ct. 54.)
People v. Roberts, 171 U. S. 658, (19 Sup. Ct. 58.)

In M. K. & T. R. Co. v. McCann, 174 U. S. 580. (19 Sup. Ct. 755—758,) the rule is laid down as follows:

"But the elementary rule is, that this Court accepts the in-
"terpretation of the statute affixed to it by the Court of last re-
"sort thereof."

Accepting the act as construed by the Court of Appeals, to apply only to transportation wholly within the state, there can be no federal question in the case.

SECOND.

The claim that the act violates article XIV of the Constitution of the United States, made in the assignment of errors, cannot be considered here.

The jurisdiction of the Court of Appeals is limited to reviewing questions of law raised in the Courts below and appearing in the record. (See opinion, page 119 of the record.)

Likewise, a question sought to be raised here, not appearing in the record to have been set up or raised in the trial Court according to the law and practice of the state, will not be heard.
Morrison v. Watson. 154 U. S. 111, (14 Sup. Ct. 995.)
Chappell v. Bradshaw, 128 U. S. 132, (9 Sup. Ct. 40.)
Winona & St. P. L. Co. v. Minnesota, 159 U. S. 526, (16 Sup. Ct. 88.)
Walker v. Sauvinet, 92 U. S. 90, (23 L. Ed. 678—679.)
Hamilton M'f'g. Co. v. Mass, 73 U. S. 632, (18 L. Ed. 904—905.)
Miller v. State, 153 U. S. 535, (14 Sup. Ct. 874.)
Brown v. Commonwealth, 144 U. S. 573, (12 Sup. Ct. 757.)
Tripp v. Santa R. R. Co., 144 U. S. 122, (12 Sup. Ct. 655.)

No federal question other than that raised in the Supreme Court of the state can be raised here. The one federal question raised in the trial court will not help the plaintiff in error to interject another question here, not interposed there according to the state practice.

In Murdock v. Mayor, 87 U. S. 590, (22 L. Ed. 429—441,) the law is carefully reviewed on this question.
Wilson v. McNamee, 102 U. S. 572.
Cooley Const. Lim. (6th Ed.) 19—20.

The case of Dewey v. City of D., 173 U. S. 193, (19 Sup. Ct. 379) and Keokuk & H. B. Co., v. Illinois, 175 U. S. 626, (20 Sup. Ct. 205—208,) are conclusive upon this question.

The claim or allegation in the answer that the act in question is void because it is in violation of various other provisions of the Constitution of the United States, is too indefinite to be considered. Maxwell v. Newbold, 59 U. S., (18 How.) 511, (15 L. Ed. 506.)

Messenger v. Mason, 77 U. S., (10 Wall.) 507, (19 L. Ed. 1028.)

THIRD.

The claim of the plaintiff in error that the mileage book law violates article XIV of the Constitution, as we understand it, announced, as decided in the case of L. S. & M. S. R Co., v. Smith 173 U. S. 684, must presuppose some property rights in the plaintiff in error, existing at the time of the passage of the act, for the Constitutional prohibition, so far as property rights are concerned, is directed to those rights, then existing. But plaintiff in error had no existence, it had no property, it had no rights, at the time of the passage of the act in question. How could the law interfere with it or its rights? How could the act violate the obligation of a contract not yet made? To make the act void the objection must have existed at the time of its passage. The law in question took effect June 15th, 1895. The contract between the incorporators of the plaintiff in error and the state whereby it came into existence was made November 14th, 1895. This contract is its charter, granted, subject to the laws then existing. It is only laws passed subsequent to the incorporation that can be said to affect its chartered rights, under article XIV of the Constitution.

This principle accords with the decisions of the courts holding that contracts are made with reference to the laws then existing.

McLean v. Pennington, 1 Paige, (N. Y.) 108—109. People v. Quigg, 59 N. Y., 89. Cooley's Const. Lim. (6th Ed.) 344—345. Bartholf v. Reilly, 74 N. Y., 509—516. Mather v. Bush, 16 John., (N. Y.) 233—249. Hicks v. Hotchkiss, 7 John. Ch., (N. Y.) 297, 305, 306—312. Ogden v. Saunders, 12 Wheat., 213, 259, 266, 295, 296, 297. Kelly v. McCarty, 3 Bradf. Sur., (N. Y.) 7, 11.

The plaintiff in error, an artificial being, created by law, has no personal rights and no property rights except such as was given to it in its creation.

Perrin v. Ches. & D. C. Co., 9 How. (U. S.) 172—184. New York Fire Ins. Co. v. Ely, 5 Conn. 560, 567, 568. Head v. Providence Ins. Co., 2 Cranch, U. S., 127, 156, 168. Dartmouth College v. Woodward, 4 Wheat., 518, 636.

All the laws of the state existing at the time of the incorporation of the plaintiff in error on November 14th, 1895, including the mileage book law, formed its charter or contract with the state giving it its existence. The plaintiff accepted the benefits and assumed the burdens imposed by such laws, as the consideration for its existence.

Cooley's Const. Lim. (6th Ed.) 479. People v. Bernard, 110 N. Y., 548, 556. Mayor v. Broadway, 17 Hun. 242. Ashley v. Ryan, 153 U. S., 436, (14 Sup. Ct. 865. Railroad Co. v. Gibbs, 24 S. C., 60, 27, S. C., 385. L. & N. R. Co. v. Kentucky, 161 U. S., 677, (16 Sup. Ct., 714—724.) Philadelphia v. Pennsylvania, 52 Pa. St., 451. Bushwick v. Ebbetts, 3 Edw., Ch. (N. Y.) 353. Owens v. St. L. & S. R. Co., 83 Mo. 454. Nolensville v. Quinby, (8 Humph.) 28 Tenn., 476. Alabama & V. R. Co. v. Odeneal, 73 Miss., 34, (19 So. 202.) McCandless v. Richmond & D. Ry. Co., 38 S. C. 103, (18 L. R. A., 440.) Pierce v. Sommerset Ry. Co., 171 U. S., 641, (19 Sup Ct. 64.)

In Lehigh Water Co. v. Borough of Easton, 121 U. S., 388, (7 Sup. Ct. 916,) it being claimed that the contract forming the company's charter had been violated, as in this case, by a law passed prior to the incorporation, the Court said:

"It is equally clear that the law of the state to which the "Constitution refers in that clause must be one enacted "after the making of the contract, the obligation of which is "claimed to be impaired."

The same principle is also applied in the cases of

Ohio & M. Ry. Co. v. McClure, 77 U. S. (10 Wall.) 511, (7 Sup. Ct.)

Denny v. Bennett, 128 U. S., 498, (9 Sup. Ct., 134, 136.)

Brown v. Smart, 145 U. S., 454, (12 Sup. Ct., 958.)

Waters P. O. Co. v. Texas, 177 U. S., 28, (20 Sup. Ct., 518, 525.)

In Turner v. Board of Com., &c., 175 U. S., 461, (19 Sup. Ct., 464,) Mr. Justice Peckham writing the opinion, it is said:

"But in this case we have no power to examine the correctness of the decision of the Supreme Court of North Carolina, because it being a writ of error to a State Court, we cannot take jurisdiction, under the allegation that a contract has been impaired by a decision of that court, when it appears that the State Court has done nothing more than construe its own constitution and statutes existing at the time when the bonds were issued; there being no subsequent legislation touching the subject. We are therefore bound by the decision of the State Court in regard to the meaning of the constitution and laws of its own state, and its decision upon such a state of facts raises no federal question."

FOURTH.

The law of 1895, stood, after the enactment of 1896, as first enacted except as modified by the amendment.

Matter of Prime, 186 N. Y., 347.

Matter of Wards, 154 N. Y., 342.

ALBERT L. PURDY,
Defendant in Error in person.